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EXAMINER

TRAN, LOUIS B

ART UNIT PAPER NUMBER

3721

DATE MAILED: 09/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,528

Applicant(s)

LACHENMEIER ET AL.

Examiner

Louis B Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 8-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to applicant's amendment, Paper No. 15, received on 07/30/2003.

Election/Restrictions

2. This application contains claims 8-14 drawn to an invention nonelected with traverse in Paper No. 11. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 112

3. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 states, "wherein said foil hood or band is held on said gripper means an end phase of said pulling over". It is assumed that applicant has intended to state, "wherein said foil hood or band is held on said gripper means during an end phase of said pulling over". Correction required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 2, 5-7, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Birkenfeld (DE 4307287).

Birkenfeld teaches a method for packaging objects in a stack 3 and forming a foil hood 17 harmonized to the length of said good to be packed or a band stock hose, reefing said foil hood or band stock, respectively, on several gripper means 13 movable in essentially a horizontal direction, of a lifting frame movable in essentially vertical direction, tentering said reefed foil hood or band stock, respectively, in essentially horizontal direction by movement of said gripper means such that said tentered opening of said foil hood or band stock respectively, is larger than the contour of said object to be packed and wherein said foil hood or band stock, respectively, is expanded in essentially a horizontal direction, pulling over of said foil hood or band stock, respectively, over said object by the essentially vertical movement of said lifting frame, wherein said foil hood or band stock is pulled off from said gripper means and is expanded in essentially a vertical direction seen in Figures 2-6, controlling the tension of said foil hood or band stock, respectively, during tentering in essentially a horizontal direction on the upper side of said stack of goods as described in page 1, lines 9-13.

With respect to claim 2, Birkenfeld teaches a method wherein said foil hood or band again is partly pulled down from said gripper means during tentering seen in Figure 4.

With respect to claim 5, Birkenfeld teaches wherein said reefing or pulling off of said foil hood or band stock during reefing or tentering, respectively, or pulling off of said

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foil hood during pulling over is effected by the movement of rolls, wherein the outer surface of rolls shift said foil hood pushed onto said gripper means.

With respect to claim 6, Birkenfeld teaches wherein said foil hood or band is held on said gripper means an end phase of said pulling over seen in Figure 6.

With respect to claim 7, Birkenfeld teaches wherein said holding of said foil hood or band stock is effected by means of rolls which press said foil hood against said gripper means.

With respect to claim 15, Birkenfeld teaches wherein said reefing or pulling-off, respectively, of said foil hood or band stock, respectively, during reefing and tentering, respectively, and pulling-off of said foil hood during pulling-over is effected by the movement of rolls 16, wherein the outer surfaces of said rolls shift said foil hood pushed onto said gripper means as in Figure 2.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birkenfeld (DE 4307287).

With respect to claim 3, Birkenfeld discloses the invention substantially as claimed including an inherent method wherein said pulling off speed of said foil hood or

band stock during tentering is lower than the speed of the movement of said gripper means to prevent overstretching.

Birkenfeld does not explicitly state that the pulling off occurs in the essentially horizontal direction only but rather in a vertical *and* horizontal movement (horizontal movement occurs to adjust for stack size change throughout process).

However, it would have been obvious to one having ordinary skill in the art to provide Birkenfeld with pull off in the essentially horizontal direction since it was known in the art to provide pull off in an essentially vertical and horizontal direction in order to prevent overstretching as in column 6, lines 30-57 and seen in Figures 8-10.

With respect to claim 4, Birkenfeld inherently teaches the method wherein said pulling off speed of said foil hood or band during pulling over of said foil hood is lower than the speed of the essentially vertical movement of said lifting frame.

Conclusion

8. Applicant's remarks have been fully considered but are deemed non-persuasive.

Applicant contends that Birkenfeld does not show that the stretch of the foil during tentering on the upper side of the stack is controlled. Page 1, lines 9-13, of the translation provided states the general operational procedure as, "then horizontally pulled open to a larger ground outline than that of the stack by a horizontal driving outwards of the gathering fingers, and subsequently, pulled over the stack, and released from its pulled open position to rest against the stack." Clearly, Birkenfeld exemplifies stretching foil during tentering on the upper side and controlling the horizontal driving of the gathering fingers.

Further support of Birkenfeld's disclosure of a controlled tenting is on page 5, lines 18-21, of the translation.

Claims are given their broadest reasonable interpretation and the common definition of control is:

con·trol (ken-trol') *verb, transitive*
con·trolled, con·trol·ling, con·trols

1. To exercise authoritative or dominating influence over; direct.¹

The gathering fingers of Birkenfeld certainly exercise influence over the stretching of the foil.

For the reasons above, the grounds of rejection are deemed proper.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

¹ *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

lbt



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700